IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1916 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPN - Appellant(s)
Versus
BOMBAY CHEMICALS PRIVATE LTD & 1 - Defendant(s)

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Appearance :

MR MG NAGARKAR for Appellant(s) : 1,
MR GIRISH D BHATT for Defendant(s) : 1,
SERVED BY RPAD - (N) for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2006

ORAL JUDGMENT

The present appeal has been filed by the appellant herein – original plaintiff (hereinafter referred to as “the plaintiff”) challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated

29th October, 1982 in partly decreeing Civil Suit No.2436 of 1977 and decreeing the suit for an amount of Rs.4560/- only.

2. The plaintiff filed Civil Suit No.2436 of 1977 before the City Civil Court at Ahmedabad for a money decree of Rs.48,432.50p for the loss caused to the plaintiff alleging that the defendants committed breach of contract by not supplying contracted material namely phenyle and it was required to purchase the same at a higher rate.

3. In the plaint, it was averred by the plaintiff that it invited tender for its requirement of phenyle for the year 1973-74. Tender filled up by defendant No.1, was accepted and the letter of acceptance was sent to defendant No.1 on 23-3-1973. Defendant No.1 agreed to supply phenyle on the agreed rate i.e. at the rate of Rs.2.52 per litre and the plaintiff was required to supply the quantity of phenyle as ordered by the plaintiff from time to time during the period between 1-4-1973 and 31-3-1974. The approximate annual requirement was indicated at 37,000/- litre phenyle. The material was to be supplied in non-returnable containers of 25 litre

drum packing. The contract was executed between the parties on 9-5-1973. Under the contract, the plaintiff had ordered for supply of 23,000/- litre of phenyle on 25-4-1973 and it had also ordered the supply of 9000/- litre of phenyle on 23-11-1973. Out of the aforesaid orders, defendant No.1 supplied 20,000/- litre phenyle from the first order and in spite of the repeated reminders, defendant No.1 deliberately did not supply phenyle to the tune of Rs.12,000/- litre. It was also further averred that defendant No.1 having regard to the terms and condition of the contract, could not have withheld supplying the quantity of phenyle as ordered by the plaintiff during the contract year of 1-4-1973 to 31-3-1974. It was further averred that refusal to supply material though ordered amounted to a clear breach of contract on the part of defendant No.1. It was further submitted that it was brought to the defendants notice that the plaintiff would be compelled to purchase the goods from the market at its cost and risks if it failed to supply the material ordered. The plaintiff invited tender for the supply of 12,000/- litre of phenyle and the same were opened on 14-8-1974. That defendant No.1 also filled in the tender for that purpose. That tender of one Shelat Brothers was accepted for supply of the

above material at the rate of Rs.6.50 plus tax plus octroi per litre reflected the current market price at the relevant time for assessing the loss suffered by the plaintiff. It was further averred that the said Shelat Brothers supplied 6280 litre with ISI specification mark and 5750 litre without the above marks. That as the same was without ISI marks, the plaintiff proposed and the said Shelat Brothers agreed to accept reduction of Rs.0.25 paisa per litre in respect of the above remaining 5750 litre phenyle supplied by it and accordingly, the plaintiff received satisfactorily the entire 12,000 litre of phenyle. That as the plaintiff had to pay Rs.4.56 per litre in respect of phenyle bearing ISI mark and the plaintiff was required to pay Rs.53,282.50p more than would have been required to pay to the defendant, had the defendants not committed the breach of the contract and thereafter taking the security deposit, the plaintiff paid for money decree of Rs.48,432.50p.

4. Defendant No.1 resisted the said suit by filing written statement at Exh-12. While refuting the plaintiff's claim, it was contended that the plaint does not disclose cause of action and that the suit is liable to be dismissed with cost and that the suit of the

plaintiff is not maintainable as the same was barred by limitation. It was also contended that there was a legal contract between the plaintiff and the defendants and the orders dated 25-4-1973 and 23-11-1973 are not binding to the defendants. It was also further disputed that the market price at the relevant time when the plaintiff purchased 12 litre of phenyle on non supply of the material by the defendants, was Rs.6.50 plus tax plus octroi per litre. It was also further denied that the plaintiff was required to pay Rs.4.56 more per litre. The learned trial Court framed the issue at Exh-15. The plaintiff as well as the defendants adduced oral as well as documentary evidences. Vinodkumar Kantilal was examined at Exh-24, Subhashchandra Someshwar at Exh-30, Arvindbhai Govindbhai Shah at Exh-47, one Dolatrai Ranchhodji Desai at Exh-80 on behalf of the plaintiff. Vilas Trambak Bochare was examined at Exh-80 and Vasudev Surya Washi at Exh-76 on behalf of the defendants. The documentary evidences were produced at Exhs-22,23 etc. After considering the oral as well as documentary evidence, the learned trial Court held issue Nos.1,2,8 and 10 in affirmative and issue Nos.3 to 7 and 9 in negative and ultimately passed a decree for an amount of Rs.4560/- with 6% interest by holding that at the

relevant time when the plaintiff purchased the phenyle which was required to be supplied by the defendants, the market price of the phenyle was at Rs.2.90 per litre. For supply of 12 litre of petrol, the very defendants filled in the tender and offered to supply phenyle at the rate of Rs.2.90 per litre and the tender filled in by the defendants for supply of 12 litre of phenyle was in fact accepted by the plaintiff Municipal Corporation and accordingly, the learned trial Court held that the Municipal Corporation is entitled to the difference between Rs.2.50 litre and Rs.2.90 litre. Being aggrieved and dissatisfied with the same, the plaintiff has preferred the present appeal.

It is the contention on behalf of the plaintiff that having held that there was a breach of contract, the leaned trial Court erred in holding that the market rate was at Rs.2.90. It is also further submitted that the appreciation of evidence by the learned trial Court in respect of market rate prevailing on the date of breach of contract, is wholly erroneous. It is also further submitted that the learned trial Court ought to have taken into consideration the quotation in the tender submitted by the Shelat Brothers and ought to have come to the conclusion that the market rate could not have

been lower than Rs.7.02 per litre and therefore, it was requested to allow the appeal.

5. On appreciation of evidence, the learned trial Court has given a finding that there was a concluded contract between the plaintiff and the defendants to supply phenyle at the rate of Rs.2.50 per litre which was binding to the defendants. The learned trial Court has also held that by non-supplying of 12,000 litre of phenyle to the plaintiff, there is a breach of contract by the defendants and the plaintiff was entitled to the difference of the market price as they were required to purchase the remaining quantity of phenyle from the market at higher rate. Therefore, now the question which is required to be considered by this Court that at what rate the plaintiff is entitled to loss. The plaintiff heavily replied upon the quotation submitted by the Shelat Brothers who had agreed to supply phenyle at the rate of Rs.7.02 per litre for the remaining quantity. That the defendants had filled in the tender in the year 1974-75 and accepted the rate, rest of the terms and condition for the year 1974-75 were similar to the terms and condition for the previous year. That on 1-4-1974, the prevalent market rate was Rs.2.90 per litre and for

the year 1974-75, the plaintiff had entered into a contract with the defendants for the purchase of similar phenyle at the rate of Rs.2.90 per litre. That even in the August, 1974, the plaintiff invited tender for the supply of 12,000/- litre phenyle and that on 14-8-1974, the prevailing market rate was Rs.2.90 per litre. In fact, the plaintiff accepted the tender of the defendants to supply phenyle at the rate of Rs.2.90 per litre. Therefore, considering the acceptance of the tender of the defendants to supply phenyle at the rate of Rs.2.90 per litre in the year 1974-75, the learned trial Court was justified in holding that the market price prevailing at the relevant time i.e. in the year 1974-75 was Rs.2.90 per litre. The learned trial Court has also given finding not accepting the price offered by the Shelat Brothers to be the correct market price at the relevant time. Considering the market price at the relevant time at Rs.2.90 per litre and the loss caused to the plaintiff i.e. the difference between Rs.2.50 per litre and 2.90 per litre, the learned trial Court has rightly awarded the loss and has rightly passed the decree for an amount of Rs.4560/-. No error has been committed by the learned trial Court in accepting the market price at the relevant time at Rs.2.90 per litre.

6. For the reasons as stated above, the appeal fails and the same is dismissed accordingly. No costs.

(M.R.SHAH,J.)

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